



**The Comptroller General  
of the United States**

Washington, D.C. 20548

KIETROVITO

## **Decision**

**Matter of:** Louis Berger & Associates, Inc.

**File:** B-233694

**Date:** March 28, 1989

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### **DIGEST**

1. Protest of alleged conflict of interest due to relationship between member of the technical proposal evaluation committee and a graduate student of awardee is denied where record does not show that any improper influence was exerted in procurement on behalf of awardee.
2. Agency request to awardee, after receipt of best and final offers, for compilation of information previously furnished does not constitute discussions where no new information is furnished to agency and the information was not essential to the awardee's proposal being determined to be acceptable.

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### **DECISION**

Louis Berger & Associates, Inc., protests the award of a contract to Arizona State University (ASU) under request for proposals (RFP) No. 7-SP-30-06230, issued by the Bureau of Reclamation, Department of the Interior, for archaeological data recovery studies. Berger contends that proposals were improperly evaluated due to conflict of interest involving a member of the technical proposal evaluation committee (TPEC) and that Interior conducted discussions solely with ASU after receipt of best and final offers (BAFOs).

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee contract for archaeological data recovery studies in connection with a water resource development and management project in central Arizona. The stated goal of the contract is to recover scientific information to understand the social, cultural and technological developments of prehistoric populations in the area.

Offerors were informed that the TPEC members would individually evaluate and rank each technical proposal in

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accordance with the stated evaluation criteria and then evaluate cost proposals. The RFP listed technical evaluation criteria with corresponding numerical values and stated that technical considerations were three times more important than cost factors.

Of the four proposals received by Interior, the TPEC determined that three proposals, including those of Berger and ASU, were minimally acceptable and with modifications should be considered for award. Interior placed the three proposals in the competitive range, initiated discussions and requested BAFOs. Interior concluded from its evaluation of the revised proposals that only the proposals of Berger and ASU remained in the competitive range. Interior renewed discussions with Berger and ASU and requested a second round of BAFOs. The TPEC found from its review of the second round of BAFOs that both revised proposals were technically acceptable, but that ASU's proposal was superior. Also, the TPEC determined that ASU's gross cost per person year of effort was lower than Berger's. The contracting officer concluded that ASU's offer was the most advantageous to the government, price and other factors considered and notified offerors that Interior intended to award a contract to ASU. This protest followed.<sup>1/</sup>

Berger argues that proposals were not fairly evaluated because of a conflict of interest between a TPEC member who was married to an anthropology and archeology graduate student at ASU. Specifically, Berger contends that this evaluator scored ASU's proposal more favorably than Berger's, that she improperly influenced other evaluators in favor of ASU, and that as a result of the conflict of interest ASU received discussions which amounted to technical leveling.

Generally, our review of conflict of interest allegations focuses not on whether a violation of applicable conflict of interest statutes or regulations occurred but on whether the individuals involved in the alleged conflict exerted improper influence in the procurement on behalf of the awardee. Front Desk Enterprises, Inc., B-230732, June 23, 1988, 88-1 CPD ¶ 603. Hence, even if a conflict is shown to

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<sup>1/</sup> Award of a contract to ASU has been stayed pending our resolution of this matter. See 31 U.S.C. § 3553(c) (Supp. IV 1986), 4 C.F.R. § 21.4(a) (1988).

exist, the protester must show that the evaluation was influenced by favoritism toward the proposed awardee. Mariah Associates, Inc., B-231710, Oct. 17, 1988, 88-2 CPD ¶ 357.

As a preliminary matter, Interior contends that the protest concerning the alleged conflict is untimely. Interior states that as early as August 29, 1988, when face-to-face discussions occurred, Berger knew that this evaluator was a member of the TPEC and was married to an archeology graduate student at ASU. Berger contends that it did not know that the evaluator and student were married but believed that they were planning to marry.

Our Bid Protest Regulations require a protester to file its protest within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). We are unable to determine from the record when the protester knew or should have known of the marital status of the evaluator and the student. In any event, we do not find that the alleged conflict resulted in improper influence in the evaluation of proposals.

The record shows that the TPEC members, in accordance with the RFP, individually scored the technical proposals and that the scores of the questioned evaluator were not out of line with the scores of other four TPEC members. Furthermore, we question whether the appearance of a conflict of interest arises under the facts presented by this case. The student in question is one of a number of graduate students attending ASU. Also, the record shows that he was not involved in the preparation of ASU's proposal or BAFOS and will perform no work on the contract. In fact, the student's specialty, zoological analysis, has no applicability to the scope of the work of the contract.

In addition, with respect to Berger's contention that Interior engaged in technical leveling, the Federal Acquisition Regulation (FAR) defines leveling as helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparation of its proposal. FAR § 15.610(d)(1) (FAC 84-16). The record does not support Berger's contention. After the first round of BAFOS, ASU and Berger were found to be technically acceptable, but ASU's proposal had received a higher technical score than Berger's. ASU's revised proposal,

after the second round of BAFOs, also was found superior. Under these circumstances, there is no support for Berger's contention that ASU's proposal was brought up to the level of Berger's. Thus, the concept of leveling is inapplicable here. See Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545.

Berger also argues that Interior improperly conducted discussions with ASU after the receipt of the final round of BAFOs. Berger states that after the closing date for receipt of the second round of BAFOs that Interior requested that ASU submit a new document compiling its BAFO answers with its initial proposal. Interior states that it did not allow ASU to modify or change its proposals but that it asked ASU to clarify its proposal by compiling information that had been previously submitted. Interior states that, in any event, the agency did not consider the compilation but made its award decision a day before the compilation was received.

Discussions occur when an offeror is given the opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. FAR § 15.601 (FAC 84-28). In contrast, a request for clarifications is merely an inquiry for the purpose of eliminating minor uncertainties or irregularities in a proposal. McManus Security Systems, 67 Comp. Gen. \_\_\_, B-231105, July 21, 1988, 88-2 CPD ¶ 68. Here, we do not find that the Interior's communication with ASU after the receipt of second BAFOs constituted discussions. The record shows that the compilation submitted by ASU did not contain information that had not been previously submitted by ASU. Also, at the time that Interior requested that ASU compile this information ASU's revised proposal had already been found technically acceptable and superior to Berger's revised proposal. We do not find that the compilation provided information which was essential to determining the acceptability of ASU's proposal.

Furthermore, even were we to find that Interior's request to ASU to compile its BAFO responses constituted discussions, we fail to see how Berger was prejudiced thereby. The record shows that Interior concluded, prior to receipt of the compilation, that it would make award to ASU as the offeror submitting the most advantageous proposal to the government. Thus, the compilation was not considered by the agency. We have held that where no prejudice is shown,

or is otherwise evident, we will not disturb an award even if some technical deficiency in the award process may arguably have occurred. See American Mutual Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65.

The protest is denied.



*James F. Hinchman*

James F. Hinchman  
General Counsel